

HOWARTH & SMITH  
ATTORNEYS AT LAW  
800 WILSHIRE BOULEVARD  
SUITE 750  
LOS ANGELES, CALIFORNIA 90017  
TELEPHONE (213) 955-9400  
FAX (213) 622-0791  
www.howarth-smith.com

DON HOWARTH

June 19, 2003

DHowarth@howarth-smith.com  
Direct Line (213) 955-9400 Ext 109

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
2003 JUN 30 A 10: 29

Jeff S. Jordan, Esq.  
Supervisory Attorney  
Central Enforcement Docket  
Federal Election Commission  
999 E Street, NW  
Washington, D.C. 20463

Re: Your file MUR 5366

Dear Mr. Jordan:

My partner, Suzelle Smith, my law firm, Howarth & Smith, my office administrator, Stacy Kern, and her husband, independent businessman Robert Kern, each received a "complaint," filed by an organization that identifies itself as "The American Conservative Union," as attachments to a letter from you dated June 6, 2003. Enclosed are sworn declarations from Ms. Smith and myself responding to the "complaint." I am informed that Ms. Kern and her husband are sending responding declarations separately.

Ms. Smith and I have purposely kept our declarations factual, and encouraged the Kerns to do the same. We did not use our response to express our indignation at the news article which lumped our Office Administrator in with others as to whom we have no knowledge, but who may be in entirely different circumstances; or our indignation at The American Conservative Union, which apparently has its own agenda, for filing such a complaint against us based on this article. We deeply resent the suggestion of either the newspaper or the political group that we, our firm, or Ms. Kern have done anything improper in holding a fund raiser where people individually contributed to Senator Edwards' campaign. We understand, however, from reviewing the materials in your

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Jeffrey S. Jordan, Esq.

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letter and the statutory scheme, that once such a "complaint" is filed, the Federal Elections Commission has no choice but to open a matter and request a response; and that there is no discretion on your part to review and reject a complaint, even one which is patently groundless, not based on any first hand knowledge, and apparently made for the purpose of deterring exercise of the rights of citizens to support political candidates.

We will expect in due course to receive your further communication regarding the Commission's response as per your letter.

Very truly yours,



Don Howarth

DH/cf

Enclosures

cc: Suzelle M. Smith, Esq.

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## Declaration of Don Howarth

I, Don Howarth, make this declaration on behalf of myself and my law firm, Howarth & Smith. I have personal knowledge of the matters represented herein and could and would testify to these under oath. I make this declaration under oath.

1. I am the managing partner at the law firm of Howarth & Smith, Los Angeles, California. I am a graduate of Harvard College and the Harvard Law School. Before founding my firm, I was a partner at Gibson, Dunn and Crutcher in Los Angeles. I am an elected Fellow of the American College of Trial Lawyers.

2. On June 9, 2003 the firm and I received a letter dated June 6 from Mr. Jeff S. Jordan and a copy of a complaint filed by a David Keene, identifying himself as Chairman of "The American Conservative Union." The letter identifies the matter as MUR 5366.

3. This declaration is in response to that letter and complaint in matter MUR 5366.

4. The complaint lists a number of individuals I do not know and makes accusations concerning them, including a statement that persons at a law firm in Little Rock, Arkansas made contributions after receiving assurances that they would be reimbursed. I have no personal knowledge of the facts or circumstances as to any of these people or of the law firm in Little Rock.

5. The complaint identifies one employee of Howarth & Smith, Ms. Stacy

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Kern. It also lists her husband, Mr. Robert Kern, not employed by us, and two partners of the firm, myself and Suzelle M. Smith. I make this declaration as to these individuals and my firm only.

6. The complaint states that it is "based on numerous media reports." In fact the allegations in the complaint as to myself, Howarth & Smith, Ms. Smith, and Mr. and Mrs. Kern are on their face expressly based on a single "article" attached to the complaint and published in "The Hill News," which ran on May 7, 2003. The article - as it relates to Ms. Kern - is replete with errors. As soon as we saw it, I discussed it with Ms. Kern and wrote the Editor of the paper, Mr. Eisele, so advising him. A true and correct copy of my letter dated May 8, 2003 is attached hereto as Ex. A.

7. The complaint makes statements that donors "were promised they would be reimbursed by their employer(s) for contributions made..." and that "donors appear not to have the financial resources available to have made the reported contributions from their own funds." It says that contributions from "low level employees" arrived on the same day along with contributions from partners and attorneys. It calls the Kerns' contribution "questionable," and says that the principals in my firm (and others) "may have engaged in illegal fundraising practices."

8. We held a fund raiser for Senator Edwards in Malibu. Our attorneys and staff were invited. Some chose to come and made a donation to the campaign; others did not. Friends, neighbors, and spouses, were also invited. Some came and made donations; others did not. Senator Edwards' staff kept a list of contributions and all donations were

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reported. If some donations "arrived" on the same day, it was probably because many of them were delivered at the fund raiser. I do not know, however, the day that any particular donation "arrived."

9. Ms. Kern is the Office Administrator of Howarth & Smith. She has been employed by us since 1985 and is the highest paid non-lawyer employee at our firm. On a confidential basis, as provided in Mr. Jordan's letter to us, I am authorized to advise you that Ms. Kern's 2003 annual salary at the firm is [REDACTED] This is before bonus, if any, which decision is made each December. She is not a low level employee without the means to make a contribution. Contrary to what the news article states, the Kerns are home owners in Los Angeles County as stated in my May 8 letter, Ex. A.

10. In addition to Ms. Kern's salary, her husband, Robert Kern, is to my knowledge a successful independent businessman. As pointed out in Ex. A, he is the owner of PNR Travel, which has been in business since 1991. I am informed and believe that he is President of the local American Society of Travel Agents and sits on its national board; and that the 1994 lien cited in the news article was entered in error and released as erroneously entered the same year.

11. I am informed and believe that the Kerns have been political donors in the past and have made political contributions for the last several years to a Political Action Committee, as set forth in Ex. A.

12. Ms. Kern made her own independent decision to attend the Edwards fund raiser, and the Kerns made their own independent decision to contribute and at what level

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to contribute to Senator Edwards. Neither the firm nor I promised reimbursement to the Kerns for their contribution. The decision and financial obligation was entirely their own; they have not been nor will they be reimbursed by me, or by the firm; or by anyone else to my knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on June 18, 2003, at Los Angeles, California.

  
Don Howarth

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DECLARATION OF SUZELLE M. SMITH

I, Suzelle M. Smith, declare as follows:

1. I am an attorney at law, duly licensed to practice in the courts of the State of California. I make this declaration on behalf of myself and my law firm, Howarth & Smith, of my own personal knowledge, except where otherwise stated, and, if called upon as a witness could and would competently testify hereto.

2. I am a partner at the law firm of Howarth & Smith, Los Angeles, California. I am a graduate of Oxford University and the University of Virginia Law School. Before founding Howarth & Smith with Don Howarth, I was an associate attorney at Gibson, Dunn and Crutcher in Los Angeles. I am an elected Fellow of the International Academy of Barristers and a member of the Board of Trustees of the University of Virginia Law School.

3. On June 11, 2003, I received a letter dated June 6 from Mr. Jeff S. Jordan and a copy of a complaint filed by a David Keene, identifying himself as Chairman of "The American Conservative Union." The letter identifies the matter as MUR 5366.

4. This declaration is in response to that letter and complaint in matter MUR 5366.

5. I have read the declaration of my partner, Don Howarth, which is being sent to the Commission with my declaration, and believe it to be true and accurate. I also have personal knowledge as set forth below.

6. I have no knowledge of the facts or circumstances as to those identified in

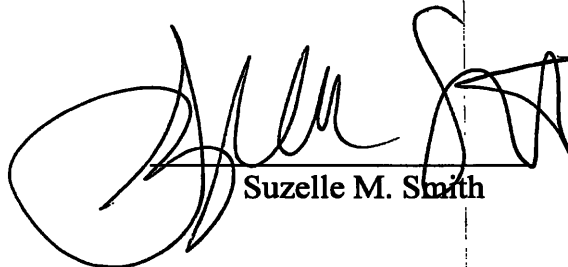
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the complaint except those at Howarth & Smith.

7. Ms. Stacy Kern and I were among the primary contacts with the staff of Senator Edwards in connection with the fund raiser, which was held at my house in Malibu, and at which we were both present. The attorneys and staff from our firm were invited to the fund raiser, along with friends and neighbors. Most, but not all, of our partners decided to contribute and attend. Many of our associate attorneys and staff elected not to make contributions or attend, and did not do so.

8. At no time did anyone from the Edwards staff, or anyone else, ever suggest that any partner or the firm should reimburse contributions made by anyone. Ms. Kern did not request any such reimbursement. She and her husband made their own decision to contribute and decided at what level to contribute. I did not at any time communicate with Mr. Robert Kern about making a contribution. I did not offer or promise reimbursement to the Kerns for their contribution. The decision and the financial responsibility for any amounts they contributed was entirely theirs.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on June 19, 2003, at Los Angeles, California.



Suzelle M. Smith

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